IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3000 of 2004

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JUPITER TEXTILE MILLS - Petitioner(s)

Versus

HARSHADBHAI KANTILAL BHATT - Respondent(s)

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Appearance :

NANAVATI & NANAVATI for Petitioner No(s).: 1.

MR TR MISHRA for Respondent No(s).: 1.

MR DS CHAUHAN for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE M.R. SHAH

Date : 05/08/2005

ORAL JUDGMENT

1.In this petition under Articles 226 and 227 of the Constitution of India, the petitioner mill company has challenged the legality and validity of the common

order passed by the Industrial Court, Ahmedabad dated 28.7.2003 passed in Appeal (IC) No.108/2002 and 5/2003 by which the Industrial Court has dismissed the Appeal No.5/2003 preferred by the petitioner company and partly allowed the Appeal No.108/2002 preferred by the respondent workman.

2. The respondent workman, who was serving with the petitioner company had approached the Labour Court, Ahmedabad by way of 'T' Application No.458/1989 under the provision of Bombay Industrial Relations Act challenging his alleged termination w.e.f. 29.7.1989. It was the contention on behalf of the respondent workman that he was serving with the petitioner mill company since 28th March, 1978 in the third shift and as the third shift was closed and all the employees, who were serving in the third shift were to be accommodated in the first shift and second shift. However, after accommodating him in other shift, all of a sudden orally the workman was informed not to come on duty w.e.f. 29.7.1989. The Labour Court, after hearing all the concerned parties, declared the action of the petitioner company in not giving him the work and orally terminating his service as illegal. However, in view of the fact that the mill company was already

closed and that the respondent workman was serving as a Badli Worker, it did not pass any order with regard to the backwages. However, directed to give all the benefits available to the respondent workman from the date of termination till the company was closed, as per seniority. Being aggrieved and dissatisfied with the judgment and award passed by the Labour Court, Ahmedabad dated 17.8.2002, the petitioner preferred appeal (IC) No.5/2003 and the respondent workman challenged the judgment and award passed by the Labour Court in not granting any backwages from the date of termination till the closure being Appeal (IC) No.108/2002. Both the appeals came to be heard by the Industrial Court and the Industrial Court by common judgment and order dated 28.7.2003 partly allowed the appeal preferred by the respondent workman by directing the petitioner to pay the wages to the respondent workman for the period between 29.7.1989 to September, 1992 to be calculated on the basis of 20 days wages per month and also further directed the petitioner to pay all other benefits available to the respondent workman as per seniority till the mill company was closed and dismissed the appeal preferred by the petitioner. Being aggrieved and dissatisfied with the common order passed by the Industrial Court, Ahmedabad dated 28.7.2003

passed in Appeal (IC) No.108/2002 and 5/2003 the petitioner has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

3. Number of submissions have been made on behalf of the learned advocates appearing on behalf of the parties in support of the judgment and order passed by the Industrial Court as well as against judgment and award passed by the Industrial Court impugned in the present Special Civil Application. However, the learned advocate appearing on behalf of the petitioner has fairly conceded that considering the length of service of the respondent workman, the respondent workman would be entitled to Rs.3,334/-towards Earned Leave and Rs.17,503/-towards Gratuity. He has also further submitted that if the wages to be paid as per the judgment and award passed by the Industrial Court the same would be Rs.52,700/- being 20 days of the wages per month. It is also further submitted that pursuant to the order passed by this Court dated 28.9.2004, an amount of Rs.73,537.15 ps. is already deposited by the petitioner with this Court, which is the amount due and payable to the respondent workman as per the judgment and award passed by the Industrial Court.

4.Shri T.R.Mishra, learned advocate, appearing on behalf of the respondent workman while supporting the judgment and award passed by the Industrial Court has submitted that as such though the petitioner was a Badli Worker, considering the number of days on which the work was being offered to the respondent workman as well as other Badli Workers, the Industrial Court has rightly directed to pay the wages from the date of termination till the date of closure i.e. September, 1992 considering 20 days of working. However, to put an end to the entire controversy, he has left it to the Court as to the amount of backwages to be paid to the respondent workman. In response to the same, learned advocate appearing on behalf of the petitioner has also left it to the Court as to the amount to be paid to the respondent workman towards the backwages from the date of termination i.e. 29.7.1989 till September, 1992. Considering the fact that the respondent workman was serving since 1978 and considering the finding of fact given by both the Courts below, this Court is of the opinion that it will be in the fitness of things to award lump sum amount towards the backwages for the aforesaid interrugnum period, which is quantified at Rs.35,000/- over and above the amount which the

respondent workman is entitled to such as Earned Leave and Gratuity. Thus, the respondent workman would be entitled to in all Rs.55,837/-. Accordingly, the judgment and order passed by the Industrial Court, Ahmedabad dated 28.7.2003 passed in Appeal (IC) No.108/2002 and 5/2003 are modified to the aforesaid extent. As stated hereinabove, the petitioner has already deposited Rs.73,537.15 ps., which is lying with this Court. Therefore, Registry is directed to issue an Account Payee Cheque for an amount of Rs.55,837.15 ps. in favour of the respondent workman and the balance amount be refunded to the petitioner by Account Payee Cheque as early as possible but not later than 15th September, 2005.

5. Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

(M.R.SHAH, J.)

kdc.